

The Banning of Anti-Personnel Landmines

The Legal Contribution of the International Committee
of the Red Cross 1955–1999

Edited by Louis Maresca & Stuart Maslen



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International Committee of the Red Cross

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THE BANNING OF ANTI-PERSONNEL LANDMINES

The legal contribution of the International Committee
of the Red Cross

The International Committee of the Red Cross (ICRC) has played a key role in the international efforts to ban anti-personnel landmines. This book provides an overview of the work of the ICRC concerning landmines from 1955 to 1999. It contains ICRC position papers, working papers, articles, and speeches made by its representatives to the international meetings convened to address the mines issue, including the 1995–1996 Review Conference of the 1980 Convention on Certain Conventional Weapons and the diplomatic meeting which adopted the Ottawa treaty banning anti-personnel mines. These documents provide critical insights into the development of international humanitarian law on this issue, and will form the basis for discussions on landmines and other conventional weapons for years to come.

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The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. It directs and coordinates the international relief activities conducted by the Movement in situations of conflict. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the International Red Cross and Red Crescent Movement.

FOREWORD BY CORNELIO SOMMARUGA

PRESIDENT, INTERNATIONAL COMMITTEE OF THE RED CROSS

The signing by 123 States of the Convention on the Prohibition of Anti-personnel Landmines (Ottawa treaty) in December 1997 was the culmination of lengthy efforts to lay down international rules against the use of anti-personnel mines. Only nineteen months earlier many in the international community had been disappointed by the failure of the 1995–1996 Conference reviewing the 1980 Convention on Certain Conventional Weapons to take decisive action against anti-personnel mines. Rather than consider the issue closed, governments and civil society continued to push for the comprehensive ban they felt was essential to halt the carnage caused by this weapon. By late 1997, some fifty governments had committed themselves to the treaty. When the signing ceremony was held this number had more than doubled and it took only ten months to attain the forty ratifications needed to bring the treaty into force. This was the fastest-ever entry into force of a multilateral arms-related agreement.

Bringing about a ban on anti-personnel mines was truly a remarkable achievement. Never before had such a diverse group of governments, organizations and UN agencies come together to put an end to a crisis of this type; never before had so many people around the world felt compelled to voice their outrage at the effects of a weapon designed to strike indiscriminately at soldiers and civilians alike. This had been a unique alliance between civil society and governments to bring into existence a treaty of international humanitarian law. The process involved was a true manifestation of what humanitarian law describes as ‘the dictates of public conscience’ and showed how that concept can change the world.

Like other humanitarian organizations, the International Committee of the Red Cross (ICRC) has been a direct witness to the horrific effects of landmines in war-torn societies. It was in the late 1980s and early 1990s that our medical staff began to sound the alarm, warning that the mines’ impact on civilians had reached intolerable levels. The ICRC came to believe that a

total prohibition on anti-personnel mines was the only truly effective solution to the crisis; existing restrictions were not effective or were not being followed. From the humanitarian point of view, a total ban was the only viable option.

Given the modest results of the 1995–1996 Review Conference, the ICRC and dozens of National Red Cross and Red Crescent Societies embarked on an unprecedented public campaign to raise awareness of the landmine problem, the need for a treaty banning them and the plight of mine victims themselves. The Red Cross / Red Crescent campaign was complemented by the extremely effective activities of the International Campaign to Ban Landmines, which was awarded the 1997 Nobel Peace Prize for its work. The campaign's goal was to stigmatize the weapon in the public mind and help generate the political will to outlaw it.

From the beginning, the ICRC stressed the need for a comprehensive ban based on an unambiguous definition of the anti-personnel mine. As the weapon was already in widespread use, its production, stockpiling and transfer also had to be prohibited. An essential step forward was to remove the ambiguity found in amended Protocol II as to what an anti-personnel mine actually was. A ban based on an imprecise definition might result in attempts to bypass the prohibition; and it risked having little impact in the field. Mine clearance, mine awareness and programmes to help the victims were also essential. Through the tireless efforts of many in the diplomatic and non-governmental-organization communities, all these elements came to be included in the Ottawa treaty.

The ban on anti-personnel mines bears witness to the power of humanity. Even States unable for the moment to adhere to the Ottawa treaty have nevertheless recognized the high price in human terms that is paid for these weapons. Many non-signing States have instituted a moratorium on their export, shown a willingness to reconsider their military doctrine, and are searching for alternatives that will allow them to comply with the ban at a future date.

Despite the speed with which a ban was achieved, the materials presented here are evidence of the huge investment in expertise from the medical, legal and political realms that was required by the process. Owing to its mandates in the fields of both humanitarian assistance and international humanitarian law, the ICRC was able to bring these resources together in a unique and credible manner. Yet this compilation of ICRC materials is only part of the broader mass of documents prepared by

humanitarian agencies and non-governmental organizations. For its part, the ICRC is delighted to have been part of the effort to bring about the ban. Our organization remains committed to strengthening further and universalizing the law and to continuing its work to assist the victims of both mines and other effects of war.

FOREWORD BY AMBASSADOR JACOB S. SELEBI

SOUTH AFRICA

Throughout the turbulent times of our recent history, the International Committee of the Red Cross has persistently and unstintingly focused the attention of the world on the devastation caused by war on innocent people and sought to strengthen the rules and principles of international humanitarian law, in order to save lives and alleviate suffering caused during and after armed conflict.

The ICRC was amongst the first campaigners to address the horrifying civilian casualties caused by anti-personnel mines long after conflicts have ended. On the African continent, which is particularly affected by this landmine scourge, these mines remain hidden to prey on those who venture out to seek firewood or to fetch water for the family, or dare to hunt or to plough the fields. These deadly killers lay to waste economic infrastructure and stifle socio-economic development.

Governments have for too long argued that anti-personnel mines are a necessary instrument of war. Nations have acquired large quantities of these mines in the misguided belief that such weapons will give them security.

The sustained efforts by the ICRC, amongst others, to raise awareness of the effect such mines have on civilians, prompted States to recognize that the right of parties to an armed conflict to choose methods of warfare is not unlimited. From this belief was born the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW). As an instrument of international humanitarian law, the objective of this Convention is to save lives and alleviate suffering during armed conflict. However, realizing that the only lasting solution to the anti-personnel mine problem is the banning of such mines, and mindful of the limitations of the CCW to achieve this goal, the Ottawa process was initiated. This process built momentum towards the conclusion of a legally binding international agreement, complementary to the CCW, to ban anti-personnel mines.

The Ottawa process stemmed from the recognition that the extreme

humanitarian and socio-economic costs associated with the use of these landmines required urgent action on the part of the international community to ban and eliminate this scourge to society.

As a result of this initiative we now have the Convention on the Prohibition of the Use, Production, Transfer and Stockpiling of Anti-Personnel Mines and on their Destruction, a treaty which sets a benchmark in the achievement of international disarmament, and establishes an international norm by also addressing humanitarian concerns.

The provisions for assistance to landmine victims and the requirements to clear emplaced landmines in support of humanitarian assistance and economic development, especially in the field of agriculture, are central to the comprehensiveness of the treaty. This Convention is not only about banning a particular type of weapon, but also about the restoration of communities which have literally been crippled by the presence of these mines in their midst. It provides us with the tool to move swiftly into action now to meet these challenges. The major issues requiring urgent attention are the task of coordination, of the removal of the millions of emplaced landmines which are causing thousands of casualties each year, and addressing the priority needs of mine victims, in terms of both adequate medical attention and rehabilitation, as well as social and economic reintegration. These elements are interdependent and need to be addressed in a comprehensive manner.

The conclusion of this Convention would not have been possible had it not been for the success of the ICRC and the International Campaign to Ban Landmines, along with many other non-governmental organizations involved with the landmine issue, in generating widespread public support for such a ban. Without the ground-swell of public opinion in favour of a ban, we would probably not have seen such a high level of political will to ban these mines on the part of governments around the world.

This publication, documenting the development of international humanitarian law on landmines, is a fitting tribute to the lobbying, campaigning, negotiating and commitment of our leaders, civil society, diplomats, military, landmine survivors and so many others who made the banning of anti-personnel mines a reality.

Ambassador Jacob S. Selebi was president of the Oslo Diplomatic Conference on an International Total Ban on Anti-Personnel Landmines. He is currently High Commissioner for the Police in the Republic of South Africa.

FOREWORD BY AMBASSADOR JOHAN MOLANDER

SWEDEN

Fourteen years after its adoption, preparations began for the First Review Conference of the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW) and, in particular, its Protocol II on Landmines. Governments approached the subject matter warily. At the very outset, few proposals for amendments were made – and they were modest at best. Generally, governments considered the Protocol a good treaty text. The problem was rather insufficient adherence and lack of implementation. Not until the third meeting of the preparatory Group of Governmental Experts did one country (Sweden) formally submit a proposal for a ban on the use of anti-personnel mines.

However, the cumbersome diplomatic process, based on universality and consensus, set in motion a chain reaction that was difficult to foresee. It created the ideal focal point for the international efforts to ban landmines. The haggling over seemingly unimportant details and procedure in comfortable Geneva, on one hand, and the nameless suffering of children, women and men torn to pieces by the hidden killers in the rice paddies of Cambodia, the valleys of Afghanistan or the fields of Angola, on the other – this contrast was too stark, too brutal not to bring home the message to millions around the globe that anti-personnel mines represent an evil that must be stopped.

The complications of the review process grew. Some mine-using and mine-producing countries stiffened their resolve to make only concessions that would be compatible with continued routine use of anti-personnel mines, at least in international conflicts. Changing instructions to other delegations, however, went in the opposite direction; the number of countries supporting a total ban was steadily growing. A fourth meeting of the preparatory Group had to be added in January 1995. Its final – and still heavily bracketed report – was adopted, thanks to exhaustion, only at 5 a.m. on a bleak Geneva Saturday morning.

When the Review Conference itself finally convened in Vienna, in September 1995, differences between delegations had again increased. So, however, had the expectations for substantive results among non-governmental organizations and the public at large.

Thus, the only success of the Vienna session, its adoption of Protocol IV banning blinding laser weapons, went unnoticed in the uproar created by the failure to agree on an amended Protocol II on landmines.

The new delay, until the Conference reconvened in Geneva in May 1996, was effectively exploited by international campaigners to galvanize public opinion. The President of the Review Conference, for his part, made good use of the time for intensive shuttle diplomacy, which took him to a number of capitals. He also arranged informal and private consultations in Geneva. Eventually, the necessary compromises were struck and the amended Protocol adopted. The political price for failure had become too high.

The outcome of the review was in substance far better than could have been expected originally. Let me just point out the extension of the scope of application to internal conflicts, the prohibition of non-detectable anti-personnel mines, the first transfer provisions in a humanitarian law treaty regarding a widely deployed weapon, the strict responsibility of mine-laying parties, the provisions aimed at protecting humanitarian missions, etc. Still, a total ban was unobtainable in a forum based on universality and consensus; that is where the Ottawa process took over. In a setting which excluded a number of major mine-using and mine-producing countries, some hundred States were able to translate their understanding of the 'dictates of public conscience', in the words of the Martens clause, into a treaty text banning anti-personnel landmines.

So where are we now?

The reality is that a number of countries, including major military powers of the North and the South, as well as key countries in conflict-prone regions, are ready to restrict in different ways the use and transfer of anti-personnel mines but are definitely not yet ready to renounce their use.

At the same time, a vast number of States, including significant military powers, have made the decision that the humanitarian cost of continued use of anti-personnel mines outweighs their military utility and have therefore banned them. It is also clear that some States, which currently depend on anti-personnel mines in their defence planning, would be willing to renounce their use, as and when alternative area-denial technologies develop.

It is my personal view that the two new international instruments are inadequate to respond to this situation, which is inherently dynamic.

Ideally, the two Conventions should complement each other, making the passage from the restrictions under Protocol II to the prohibition under the Ottawa Convention as easy as possible. As they now stand, there is a risk that they are seen as in some way antagonistic.

Protocol II of the CCW contains significant new restrictions and prohibitions, but they could be undermined if use is made of the unnecessarily long transition periods allowed. Furthermore, the text has become so complex that it could hardly survive another amendment, unless it were a radical and simple one – a total ban on anti-personnel mines.

The Ottawa Convention could have been formulated as a potential 'Protocol V' of the CCW permitting States Parties to add to their obligations the key provision not to use, transfer, produce or stockpile anti-personnel mines. It seems to me, however, that the Ottawa drafters have added elements to the treaty which make it unacceptable to a number of countries even if, at some point, these countries were ready to undertake to ban anti-personnel landmines. In plain words: the Ottawa Convention provides excuses not to join it.

I have two particular points in mind.

The first – which might be of minor importance – is the redefinition of an 'anti-personnel mine' under the Ottawa Convention. Admittedly, the new definition is marginally better, from the humanitarian point of view, than the one under Protocol II because it is more specific. The definition in the Protocol, however, was elaborated with the concurrence of all major military powers. If we want them to join, was it a clever move to change their definition?

The second point is more troublesome. It was evident from the proceedings of the CCW Review Conference that a number of important countries vehemently resist the idea of verification, in particular of production and stockpiling, for reasons ranging from principle to practicality. Still, the Ottawa Convention contains provisions on verification which make an unusual combination of total intrusiveness in principle and considerable weakness in practice.

The scope, in principle, for inspections is extremely far reaching, while the political filter for triggering it is so tightly knit that only a politically totally isolated State would run the risk of being the object of challenge inspections under the Ottawa Convention.

Thus, in my view, the treaty provides an excuse for countries resisting intrusive inspections regimes in principle not to join it. At the same time, it sets an unsatisfactory precedent for verification procedures in other disarmament negotiations, in particular if they deal with offensive capabilities.

In conclusion, we have two international instruments dealing with the same weapon, albeit on the basis of slightly different definitions.

Protocol II is universal in the sense that it was adopted by consensus in a global forum. In substance, however, it does not go far enough. It represents an unsatisfactory lowest common denominator.

The Ottawa Convention, in substance, attains what the 'dictates of public conscience' will eventually dictate to all. It, however, also contains provisions unrelated to its essential subject matter, which create obstacles – which I personally find unnecessary – to future adherence by those who did not participate in the process, and who currently use and produce anti-personnel landmines.

The landmine crisis is not over and will not be over for a long time. The situation calls for continued efforts in diplomacy including international humanitarian law, as well as in mine clearance, assistance, etc.

Efforts must continue to press for adherence to both international instruments. While it is clear that some countries will not be able to join the Ottawa Convention, they must be made to ratify the amended Protocol II, which they have adopted. Likewise, it is equally important that countries that ratify the Ottawa Convention do not forget to adhere to the CCW. While insufficient, Protocol II contains important advances in international humanitarian law. Furthermore the CCW as a whole is an international Convention of global importance to the continued development of international humanitarian law, as demonstrated by the adoption of Protocol IV on blinding laser weapons.

Finally, the CCW represents the only accepted global forum in which mine-users and those favouring a ban can continue to discuss landmine issues. It is therefore all the more important that all those that adhere to the Ottawa Convention also adhere to the CCW. The relationship between the two instruments must be discussed. It would be unfortunate if the present situation resulted in two different camps, each with its own Convention. It would bring the mine issue no further and the 1980 CCW, created as a dynamic instrument elaborated to provide legal responses to dangerous technological developments, would fall victim and risk becoming irrelevant.

There is thus a continued need for dialogue and creative diplomacy.

As is clear from this publication, the ICRC has already made an extremely valuable contribution to both the CCW and the Ottawa treaty. I am confident that it will continue its fruitful work on behalf of landmine victims and these important treaties in the years ahead.

Ambassador Molander was president of the 1995–1996 Review Conference of the States Parties to the 1980 CCW and is currently the Permanent Representative of Sweden to international organizations in Geneva, Switzerland.

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